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CHARLES ELMORE CROPLEY
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 834

WILBUR E. DOW,

Petitioner,

vs.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, AND HENRY L. STIMSON, SECRETARY OF WAR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PETITION FOR REHEARING.

WILBUR E. DOW, JR.,
Counsel for Petitioner.

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WILBUR E. DOW,

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against

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, AND HENRY L. STIMSON, SECRETARY OF WAR.

PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Statute.

The statute in question reads as follows: Section 1 of the Act of Congress, June 6, 1924, 42 Stat. 464, as amended June 18, 1926, 44 Stat. 752, reading as follows:

> "Section 1. That for the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska, the Secretary of Commerce from time to time may set apart and reserve fishing areas in

any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved, the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein; (b) limit the catch of fish to be taken from any area; (c) make such regulations as to time, means, methods and extent of fishing as he may deem advisable. From and after the creation of any such fishing area and during the time fishing is prohibited therein, it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided, That every such regulation made by the Secretary of Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce.* The right herein given to establish fishing areas and to permit limited fishing therein shall not apply to any creek, stream, river, or other bodies of water in which fishing is prohibited by specific provisions of this Act, but the Secretary of Commerce through the creation of such areas and the establishment of closed seasons may further extend the restrictions and limitations imposed upon fishing by specific provisions of this or any other Act of Congress; Provided, further, that the Secretary of Commerce is hereby authorized to permit the taking of fish or shellfish, for bait purposes only, at any or all seasons in any or all Alaskan Territorial waters. (Italics ours.)

Point I.

The Statutory Right of Fishery is Being Denied in Alaska Waters.

The statute states:

> "* * * *nor shall any citizen of the United States be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska* where fishing is permitted by the Secretary of Commerce (Interior)." (Italics ours.)

If this statute means what it says, then it means that any citizen may fish by the same means that any other citizen may use. The Secretary is privileged to *control all fishing equally* and thus regulate the industry in accordance with the statute and in fairness to all who wish to participate in it.

The words of the statute "where fishing is permitted by the Secretary of Commerce" can only mean the general areas that were in existence at the time the Act was passed. It is a prostitution of these words to hold that they mean *a single trap site as granted to an individual or corporation.*

Point II.

The Statute is Designed to Prevent the Re-establishment of a Monopoly Enjoyed by a Few Large Fish Operators.

By twisting the terms of the statute which was written as clearly as words could make it, the Secretary has succeeded, unwittingly or otherwise, in re-establishing that monopoly at which the statute was aimed so that the plaintiff herein, or any other American citizen, whether living in Continental United States or Alaska, *is unable to engage in his statutory right of fishery.* The language of the statute is clear. *Either it means what it says or no statute means what it says unless the Secretary says it does.*

POINT III.

The Secretary Exceeded the Bounds of His Discretion in Interpreting the Statute for Which Relief Should be Granted.

Every proper delegation of legislative authority contains, or should contain, its own bounds or limitations of discretion. The statute in question specifically says that the Secretary may control fishing by "time, means, methods and extent". It then goes on to say "*that no exclusive or several right of fishery shall be granted therein*" and "*nor shall any citizen of the United States be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska.* * * *".

These limitations constitute the metes and bounds of the Secretary's discretion. If he exceeds it, and he has or the petitioner would not be before this Court, he should be restrained.

Conclusion.

The statute specifically gives all citizens the right to fish in the waters of Alaska on equal terms, each with the other. The decision of the Court of Appeals of the District of Columbia, in words which no fisherman has been able to understand, has taken away that right and nullified the statute. To the fisherman, this simply means that the law does not mean what it says.

This Honorable Court is the last appeal to which men may come in a Government of laws and not of people.

WILBUR E. DOW,
By WILBUR E. DOW, JR.,
Counsel for Petitioner.

STATE OF NEW YORK,
County of New York, ss:

Wilbur E. Dow, Jr., being duly sworn, according to law, deposes and says:

That he is counsel for the petitioner herein and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

WILBUR E. DOW, JR.

Sworn to before me this 12th day of March, 1942.

VIOLA C. OTTAVIANO,
[SEAL.] *Notary Public, Westchester County.*

New York County Clerk's No. 83.
Commission expires March 30, 1943.

I hereby certify that I have examined the foregoing Petition and that in my opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

WILBUR E. DOW, JR.,
Counsel for Petitioner.